

**CALIFORNIA INSTITUTE OF TECHNOLOGY  
JET PROPULSION LABORATORY  
GENERAL PROVISIONS PART II -  
FIXED-PRICE RESEARCH AND DEVELOPMENT CONTRACT**

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*GENERAL PROVISIONS CANNOT BE ALTERED WITHOUT NASA APPROVAL*

#### **ARTICLE GP-61. INSPECTION OF RESEARCH AND DEVELOPMENT**

- (a) The Contractor shall provide and maintain an inspection system acceptable to JPL covering the work under this Contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to JPL during Contract performance and for as long afterwards as the Contract requires.
- (b) JPL, through any authorized representative, has the right to inspect and test all work called for by the Contract, to the extent practicable at all places and times, including the period of performance, and in any event before acceptance. JPL may also inspect the premises of the Contractor or any subcontractor engaged in Contract performance. JPL shall perform inspections and tests in a manner that will not unduly delay the work.
- (c) If JPL performs any inspection or test on the premises of the Contractor or a subcontractor, the Contractor shall furnish and shall require subcontractors to furnish, without additional charge, all reasonable facilities and assistance for the safe and convenient performance of these duties. Except as otherwise provided in the Contract, JPL shall bear the expense of inspections or tests made at other than the Contractor's or subcontractor's premises.
- (d) JPL shall accept or reject the work as promptly as practicable after delivery, unless otherwise specified in the Contract. Failure by JPL to inspect and accept or reject the work shall not relieve the Contractor from responsibility, nor impose liability on JPL, for nonconforming work. Work is nonconforming when it is defective in material or workmanship or is otherwise not in conformity with all applicable Contract requirements.
- (e) JPL has the right to reject nonconforming work and may thereupon terminate the Contract for default as provided in the Article of this Contract entitled "Default." If the Contractor fails or is unable to correct or to replace nonconforming work within the delivery schedule (or such later time as JPL may authorize), JPL may accept the work and make an equitable price reduction.
- (f) Inspection and test by JPL does not relieve the Contractor from responsibility for defects or other failures to meet the Contract requirements that may be discovered before acceptance. Acceptance shall be conclusive, except for latent defects, fraud, gross mistakes amounting to fraud, or any applicable warranty or guarantee, or as otherwise specified in the Contract. If acceptance is not conclusive for any of these causes, JPL, in addition to any other rights and remedies provided by law, or under other provisions of this Contract, shall have the right (i) to require the Contractor, at no increase in Contract price, to correct or replace the defective or nonconforming supplies (work) at the original point of delivery or at the Contractor's plant at JPL's election, and in accordance with a reasonable delivery schedule as may be agreed upon between the Contractor and JPL; provided, that JPL may require a reduction in Contract price if the Contractor fails to meet such delivery schedule; or (ii) within a reasonable time after the Contractor's receipt of notice of defects or nonconformance, to repayment of such portion of the Contract price as is equitable under the circumstances if JPL elects not to require correction or replacement. When supplies (work) are (is) returned to the Contractor, the Contractor shall bear transportation costs from the original point of delivery to the Contractor's plant and return to the original point of delivery when that point is not the Contractor's plant.
- (g) The Government has the right to inspect and evaluate the work performed or being performed under the Contract, and the premises where the work is being performed, at all reasonable times and in a manner that will not unduly delay the work. If the Government performs inspection or evaluation on the premises of the Contractor or a subcontractor, the Contractor shall furnish and shall require subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

#### **ARTICLE GP-62. CHANGES**

- (a) JPL may by written Contract Unilateral Modification, at any time and without notice to the sureties, if any, make changes or issue written directions within the general scope of this Contract requiring additional work or directing the omission of or variation in work covered by this Contract.
- (b) If any such change causes an increase or decrease in the cost of, or the time required for, performing this Contract, whether or not changed by the Modification, JPL shall make an equitable adjustment in (i) the Contract price, the time of performance, or both; and (ii) other affected terms of the Contract, and shall modify the Contract accordingly.

- (c) The Contractor must assert its right to an adjustment under this Article within 30 days from the date of receipt of the Modification. However, if JPL decides that the facts justify it, JPL may receive and act upon a proposal submitted before final payment of the Contract.
- (d) JPL may require change order accounting when deemed necessary. The Contractor, for each change or series of related changes, shall maintain separate accounts, by job order or other suitable accounting procedure, of all incurred segregable, direct costs (less allocable credits) of work, both changed and not changed, allocable to the change. The Contractor shall maintain such accounts until the parties agree to an equitable adjustment for the changes ordered by JPL.
- (e) If the Contractor's proposal includes the cost of property made obsolete or excess by the change, JPL shall have the right to prescribe the manner of the disposition of the property.
- (f) Nothing in this Article shall excuse the Contractor from proceeding with the Contract as modified.

#### **ARTICLE GP-63. SUBCONTRACTS**

No contract shall be made by the Contractor with any other party for furnishing any of the completed or substantially completed articles or work herein contracted for, without the written approval of JPL as to sources.

#### **ARTICLE GP-64. GOVERNMENT PROPERTY**

- (a) JPL shall deliver to the Contractor, at the time stated in the Schedule or, if not so stated, in sufficient time to enable the Contractor to meet the delivery or performance schedule, the Government-owned property described as JPL-furnished property in the Schedule or specifications. If that property, suitable for its intended use, is not delivered to the Contractor, JPL shall equitably adjust affected provisions of this Contract in accordance with the Changes Article when:
  - (1) The Contractor submits a timely written request for an equitable adjustment; and
  - (2) The facts warrant an equitable adjustment.
- (b) Title to JPL-furnished property shall remain in the Government. The Contractor shall use the JPL-furnished property only in connection with this Contract. The Contractor shall maintain adequate property control records in accordance with sound industrial practice and will make such records available for JPL or Government inspection at all reasonable times.
- (c) Upon delivery of JPL-furnished property to the Contractor, the Contractor assumes the risk and responsibility for its loss or damage, except:
  - (1) For reasonable wear and tear;
  - (2) To the extent property is consumed in performing this Contract; or
  - (3) As otherwise provided for by the provisions of this Contract.
- (d) Upon completing this Contract, the Contractor shall follow the instructions of JPL regarding the disposition of all JPL-furnished property not consumed in performing this Contract or previously delivered to JPL. The Contractor shall prepare for shipment, deliver f.o.b. origin, or dispose of the Government property, as may be directed or authorized by JPL. The net proceeds of any such disposal shall be credited to the Contract price or shall be paid as directed by JPL.
- (e) If this Contract is to be performed outside the United States of America, its territories, or possessions, the words "Government" and "JPL-furnished" (wherever they appear in this Article) shall be construed as "United States Government" and "United States Government-owned/JPL-furnished," respectively.

#### **ARTICLE GP-65. PAYMENTS AND DISCOUNTS**

- (a) Invoices shall be submitted in triplicate to the attention of the JPL Accounting Section, unless otherwise specified, and shall contain the following information as applicable: (i) Contract number, (ii) item number, (iii) description of supplies or services, (iv) size, (v) quantity, (vi) unit price, (vii) extended totals and (viii) any other information which may be specified in the Schedule of this Contract. Any applicable state sales or use taxes or Federal excise taxes shall be shown separately on the invoice.
- (b) The Institute shall pay the Contractor, upon the submission of proper invoices or vouchers, the prices stipulated in this Contract for supplies delivered and accepted or services rendered and accepted, less any deductions provided in this Contract.
- (c) Payments will be made within the net period, if any, specified in the Contract, measured from the date of receipt of the goods or services at the destination or the date of receipt of the invoice, whichever is later. Discount time periods will be measured from the same date. Payment shall be deemed to have been made on the date the check is mailed.
- (d) Payment for goods or services in accordance with this paragraph will not waive or otherwise affect the right of JPL to inspect such goods or services or to reject, or revoke acceptance of, nonconforming goods.
- (e) Unless otherwise specified in this Contract, payment shall be made upon acceptance of any portion of the work delivered or rendered for which a price is separately stated in the Contract.

#### **ARTICLE GP-66. INSURANCE AND INDEMNIFICATION**

(This Article is applicable if the Contract amount exceeds the small purchase limit in FAR Part 13 and if this Contract requires work on a Government installation or premises under the control of the Institute, unless (i) only a small amount of work is required on the Government installation or Institute-controlled premises; or (ii) all such work is to be performed outside the United States, its possessions, or Puerto Rico.)

- (a) Insurance. The Contractor shall, at its own expense, provide and maintain during the entire performance period of this Contract at least the following kinds and minimum amounts of insurance with the Institute named as an additional named insured in policies for comprehensive general liability insurance with a carrier licensed and admitted in the State of California.
  - (1) Workers' Compensation and Employer's Liability Insurance, as required by applicable Federal and state workers' compensation and occupational disease statutes. If occupational diseases are not compensable under those statutes, they shall be covered under the Employer's Liability section of the insurance policy, except when Contract operations are so commingled with the Contractor's commercial operations that it would not be practical. The Employer's Liability coverage shall be at least \$100,000, except in states with exclusive or monopolistic funds that do not permit worker's compensation to be written by private carriers. However, the Contractor in fulfillment of its obligation to provide Workers' Compensation Insurance may maintain a self-insurance program if the Contractor is qualified pursuant to statutory authority to do so.
  - (2) Comprehensive Liability Insurance, including automobiles (owned, non-owned, or leased), completed operations, products, and contractual liability, for a combined single limit of not less than \$1,000,000 for all deaths, injuries, and property damage arising from one accident or occurrence.
- (b) Insurance Certificates and Endorsements. Before commencing work under this Contract, the Contractor shall furnish (i) certificates of insurance for the coverages specified in (a) above, and (ii) an additional insured endorsement naming the Institute as an additional insured to the contract for the coverage specified in (a)(2) above. Such certificates and the endorsement shall provide that any cancellation or material change in the insurance policies shall not be effective (i) for such period as the laws of the State in which this Contract is to be performed prescribe, or (ii) until 30 days after the insurer or the Contractor gives written notice to JPL, whichever period is longer. Also, such certificates and the endorsement shall (i) cover contractual liability assumed under this Contract, and (ii) be primary and non-contributing to any insurance procured by the Institute. The Contractor agrees to permit the Institute to examine its original policies, should the Institute so request. Should the Contractor at any time neglect or refuse to provide the insurance required herein, or should such insurance be canceled, the Institute shall have the right to procure same and the costs thereof shall be deducted from monies then due or thereafter to become due to the Contractor.

- (c) Indemnification. The Contractor agrees that it will be responsible to the Government and the Institute for, and will indemnify and hold harmless the Government and the Institute, its trustees, officers, and employees, from any loss, cost, damage, expense or liability, attorney's fees, or any suit therefor, by reason of actual or alleged property damage or personal injury of whatsoever kind or character, arising out of or in connection with the performance of work hereunder by the Contractor or any of its subcontractors, howsoever the same may be caused, including any of the same resulting from alleged or actual negligent act or omission, regardless of whether such act or omission is active or passive, but excepting only such loss, cost, damage, expense or liability attributable to the sole negligence or willful misconduct of the Government or of the Institute, its trustees, officers or employees.
- (d) Subcontracts. The Contractor shall insert the substance of this Article, including this paragraph (d), in subcontracts under this Contract which exceed the small purchase limit in FAR Part 13 if the subcontract requires work on a Government installation or premises under the control of the Institute, unless (i) only a small amount of work is required on the Government installation or Institute-controlled premises; or (ii) all such work is to be performed outside the United States, its possessions, or Puerto Rico, modified as necessary to correctly identify the parties. At least five days before entry of each such subcontractor's personnel on the Government installation or Institute-controlled premises, the Contractor shall furnish (or ensure that there has been furnished) to JPL a current certificate of insurance meeting the requirements of paragraph (b) above, for each such subcontractor.

#### **ARTICLE GP-67. COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT**

- (a) Contractor agrees to comply with the Americans with Disabilities Act (42 U.S.C. 12101, et. seq.) and all implementing regulations.
- (b) Contractor agrees that it will be responsible to the Government and the Institute for, and will indemnify and hold harmless the Government and the Institute, its trustees, officers, and employees from any loss, cost, damage, expense or liability or suit therefor, by reason of actual or alleged property damage or personal injury of whatever kind or character, arising out of, or in connection with performance of the requirements of paragraph (a) above by the Contractor or any of its subcontractors, however the same may be caused, excepting only such loss, cost, damage, expense or liability attributable to the sole or contributory active negligence of the Government or of the Institute, its trustees, officers, or employees.
- (c) Contractor agrees to insert this Article, including (c), in all subcontracts and purchase orders hereunder.

#### **ARTICLE GP-68. ADDITIONAL DATA REQUIREMENTS**

- (a) In addition to the data (as defined in the "Rights in Data - General" Article or other equivalent included in this Contract) specified elsewhere in this Contract to be delivered, JPL may at any time during Contract performance or within a period of three years after acceptance of all items to be delivered under this Contract, order any data first produced or specifically used in the performance of this Contract.
- (b) The "Rights in Data - General" Article or other equivalent included in this Contract is applicable to all data ordered under this "Additional Data Requirements" Article. Nothing contained in this Article shall require the contractor to deliver any data the withholding of which is authorized by the "Rights in Data - General" Article or other equivalent Article of this Contract, or data which are specifically identified in this Contract as not subject to this Article.
- (c) When data are to be delivered under this Article, the Contractor will be compensated for converting the data into the prescribed form, for reproduction, and for delivery.
- (d) The Contracting Officer through JPL may release the Contractor from the requirements of this Article for specifically identified data items at any time during the three-year period set forth in paragraph (a) above.

#### **ARTICLE GP-69. TERMINATION FOR CONVENIENCE**

- (a) JPL may terminate performance of work under this Contract in whole or, from time to time, in part if JPL determines that a termination is in the interest of the Institute or the Government. JPL shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date.

- (b) After receipt of a Notice of Termination, and except as directed by JPL, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this Article:
- (1) Stop work as specified in the notice.
  - (2) Place no further subcontracts or orders (referred to as subcontracts in this Article) for materials, services, or facilities, except as necessary to complete the continued portion of the Contract.
  - (3) Terminate all subcontracts to the extent they relate to the work terminated.
  - (4) Assign to JPL or the Government, as directed by JPL, all right, title, and interest of the Contractor under the subcontracts terminated, in which case JPL shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
  - (5) With approval or ratification to the extent required by JPL, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this Article.
  - (6) Submit in a form acceptable to JPL inventory schedules covering all items of property not consumed in the performance of this Contract or not previously delivered to JPL.
  - (7) As directed by JPL, transfer title to the Government and deliver to JPL (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, and (ii) the completed or partially completed plans, drawings, information, and other property that, if the Contract had been completed, would be required to be furnished to JPL.
  - (8) Complete performance of the work not terminated.
  - (9) Take any action that may be necessary, or that JPL may direct, for the protection and preservation of the property related to this Contract that is in the possession of the Contractor and in which the Government has or may acquire an interest.
  - (10) Use its best efforts to sell, as directed or authorized by JPL, any property of the types referred to in subparagraph (7) above; provided, however, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, JPL. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by JPL under this Contract, credited to the price or cost of the work, or paid in any other manner directed by JPL.
- (c) After expiration of the plant clearance period as defined in Subpart 45.6 of FAR and any corresponding implementing or supplementing provisions in the NFS, the Contractor may submit to JPL a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by JPL. The Contractor may request JPL to remove those items or enter into an agreement for their storage. Within 15 days of such request, JPL will accept those items and remove them or enter into a storage agreement. JPL may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.
- (d) After termination, the Contractor shall submit a final termination settlement proposal to JPL in the form and with the certification prescribed by JPL. The Contractor shall submit the proposal promptly, but no later than six months from the effective date of termination, unless extended in writing by JPL upon written request of the Contractor within this six- month period. However, if JPL determines that the facts justify it, a termination settlement proposal may be received and acted on after six months or any extension. If the Contractor fails to submit the proposal within the time allowed, JPL may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.

- (e) Subject to paragraph (d) above, the Contractor and JPL may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (e) or paragraph (f) below, exclusive of costs shown in subparagraph (f)(3) below, may not exceed the total Contract price as reduced by (i) the amount of payments previously made and (ii) the Contract price of work not terminated. The Contract shall be amended, and the Contractor paid the agreed amount. Paragraph (f) below shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.
- (f) If the Contractor and JPL fail to agree on the whole amount to be paid because of the termination of work, JPL shall pay the Contractor the amounts determined by JPL as follows, but without duplication of any amounts agreed on under paragraph (e) above:
  - (1) The Contract price for completed supplies or services accepted by JPL (or sold or acquired under subparagraph (b)(9) above) not previously paid for, adjusted for any saving of freight and other charges.
  - (2) The total of:
    - (A) The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but excluding any costs attributable to supplies or services paid or to be paid under subparagraph (f)(1) above;
    - (B) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the Contract if not included in subdivision (A) above; and
    - (C) A sum, as profit on subdivision (A) above, determined by JPL under FAR 49.202 and any corresponding implementing or supplementing provisions in the NFS, in effect on the date of this Contract, to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire Contract had it been completed, JPL shall allow no profit under this subdivision (C) and shall reduce the settlement to reflect the indicated rate of loss.
  - (3) The reasonable costs of settlement of the work terminated, including:
    - (A) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;
    - (B) The termination and settlement of subcontracts (excluding the amounts of such settlements); and
    - (C) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.
- (g) Except for normal spoilage, and except to the extent that JPL or the Government expressly assumed the risk of loss, JPL shall exclude from the amounts payable to the Contractor under paragraph (f) above, the fair value, as determined by JPL, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to JPL or to a buyer.
- (h) The cost principles and procedures of Part 31 of FAR and any corresponding implementing or supplementing provisions in the NFS, in effect on the date of this Contract, shall govern all costs claimed, agreed to, or determined under this Article.
- (i) In arriving at the amount due the Contractor under this Article, there shall be deducted:
  - (1) All unliquidated advance or other payments to the Contractor under the terminated portion of this Contract;
  - (2) Any claim which JPL has against the Contractor under this Contract; and
  - (3) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the Contractor or sold under the provisions of this Article and not recovered by or credited to JPL.

- (j) If the termination is partial, the Contractor may file a proposal with JPL for an equitable adjustment of the price(s) of the continued portion of the Contract. JPL shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this Article shall be requested within 90 days from the effective date of termination unless extended in writing by JPL.
- (k) (1) JPL may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the Contract, if JPL believes the total of these payments will not exceed the amount to which the Contractor will be entitled.  
  
(2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to JPL upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by JPL because of the circumstances.
- (l) Unless otherwise provided in this Contract or by statute, the Contractor shall maintain all records and documents relating to the terminated portion of this Contract for three years after final settlement. This includes all books and other evidence bearing on the Contractor's costs and expenses under this Contract. The Contractor shall make these records and documents available to JPL and the Government, at the Contractor's office, at all reasonable times, without any direct charge. If approved by JPL, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

#### **ARTICLE GP-70. (RESERVED)**

#### **ARTICLE GP-71. FEDERAL, STATE, AND LOCAL TAXES**

##### **(a) Definitions.**

- (1) "Contract date," as used in this Article, means the effective date of this Contract or Modification.
  - (2) "All applicable Federal, State, and local taxes and duties," as used in this Article, means all taxes and duties, in effect on the Contract date, that the taxing authority is imposing and collecting on the transactions or property covered by this Contract.
  - (3) "After-imposed Federal tax," as used in this Article, means any new or increased Federal excise tax or duty, or tax that was exempted or excluded on the Contract date but whose exemption was later revoked or reduced during the Contract period, on the transactions or property covered by this Contract that the Contractor is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the Contract date. It does not include social security tax or other employment taxes.
  - (4) "After-relieved Federal tax," as used in this Article, means any amount of Federal excise tax or duty, except social security or other employment taxes, that would otherwise have been payable on the transactions or property covered by this Contract, but which the Contractor is not required to pay or bear, or for which the Contractor obtains a refund or drawback, as the result of legislative, judicial, or administrative action taking effect after the Contract date.
- (b) Unless otherwise provided in the Schedule, the Contract price includes all applicable Federal, State, and local taxes and duties.
  - (c) The Contract price shall be increased by the amount of any after-imposed Federal tax, provided the Contractor warrants in writing that no amount for such newly imposed Federal excise tax or duty or rate increase was included in the Contract price, as a contingency reserve or otherwise.
  - (d) The Contract price shall be decreased by the amount of any after-relieved Federal tax.
  - (e) The Contract price shall be decreased by the amount of any Federal excise tax or duty, except social security or other employment taxes, that the Contractor is required to pay or bear, or does not obtain a refund of, through the Contractor's fault, negligence, or failure to follow instructions of JPL.



- (f) No adjustment shall be made in the Contract price under this Article unless the amount of the adjustment exceeds \$250.
- (g) The Contractor shall promptly notify JPL of all matters relating to any Federal excise tax or duty that reasonably may be expected to result in either an increase or decrease in the Contract price and shall take appropriate action as JPL directs.
- (h) Items of tangible personal property to be delivered under this Contract are for resale to the United States Government (California Resale Certificate No. SR AP 17-006226).
- (i) JPL shall, without liability, furnish evidence appropriate to establish exemption from any Federal, State, or local tax when the Contractor requests such evidence and a reasonable basis exists to sustain the exemption.

#### **ARTICLE GP-72. STOP WORK ORDER**

- (a) JPL may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this Contract for a period of 90 days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop work order issued under this Article. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop work order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, JPL shall either:
  - (1) Cancel the stop work order; or
  - (2) Terminate the work covered by such order either for convenience of the Institute or the Government or, if appropriate, for default.
- (b) If a stop work order issued under this Article is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. JPL shall make an equitable adjustment in the delivery schedule, the contract amount, and in any other provisions of the Contract that may be affected, and the Contract shall be modified, in writing, accordingly, if:
  - (1) The stop work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this Contract; and
  - (2) The Contractor asserts a claim for the adjustment within 30 days after the end of the period of work stoppage; provided, that, if JPL decides the facts justify the action, it may receive and act upon the claim asserted at any time before final payment under this Contract.
- (c) If a stop work order is not canceled and the work covered by the order is terminated for the convenience of the Institute or the Government, JPL shall allow reasonable costs resulting from the stop work order in arriving at the termination settlement.
- (d) If a stop work order is not canceled and the work covered by the order is terminated for default, JPL shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop work order.

#### **ARTICLE GP-73. DEFAULT**

- (a) (1) JPL may, subject to paragraphs (c) and (d) below, by written Notice of Default to the Contractor, terminate this Contract, in whole or in part, if the Contractor fails to:
  - (A) Perform the work under the Contract within the time specified in this Contract or any extension;
  - (B) Prosecute the work, so as to endanger performance of this Contract (but see subparagraph (a)(2) below); or
  - (C) Perform any of the other provisions of this Contract (but see subparagraph (a)(2) below).

- (2) JPL's right to terminate this Contract under subdivisions 1(B) and (1)(C) of this paragraph may be exercised if the Contractor does not cure such failure within 10 days (or more, if authorized in writing by JPL) after receipt of the notice from JPL specifying the failure.
- (b) If JPL terminates this Contract in whole or in part, it may acquire, under the terms and in the manner JPL considers appropriate, work similar to the work terminated, and the Contractor will be liable to JPL for any excess costs for the similar work. However, the Contractor shall continue the work not terminated.
- (c) Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the Contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (i) acts of God or of the public enemy, (ii) acts of the Government in either its sovereign or contractual capacity, (iii) fires, (iv) floods, (v) epidemics, (vi) quarantine restrictions, (vii) strikes, (viii) freight embargoes, and (ix) unusually severe weather. In each instance the failure to perform must be beyond the control and without the fault or negligence of the Contractor.
- (d) If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule or other performance requirements.
- (e) If this Contract is terminated for default, JPL may require the Contractor to transfer and deliver to JPL, as directed by it, any (i) completed or partially completed work not previously delivered to, and accepted by, JPL and (ii) other property, including contract rights, specifically produced or acquired for the terminated portion of this Contract. Upon direction of JPL, the Contractor shall also protect and preserve property in its possession in which JPL or the Government has an interest.
- (f) JPL shall pay the Contract price, if separately stated, for completed work it has accepted. In addition, JPL and the Contractor may agree upon amounts for (i) completed work for which no separate price is stated, (ii) partially completed work, (iii) other property described above that JPL accepts, and (iv) the protection and preservation of the property. The Institute may withhold from these amounts any sum JPL determines to be necessary to protect the Institute against loss from outstanding liens or claims of former lien holders.
- (g) If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued pursuant to the Article of this Contract entitled "Termination for Convenience."
- (h) The rights and remedies of JPL in this Article are in addition to any other rights and remedies provided by law or under this Contract.

#### **ARTICLE GP-74. (RESERVED)**

#### **ARTICLE GP-75. RESPONSIBILITY FOR SUPPLIES**

- (a) Title to supplies furnished under this Contract shall pass to the Government upon formal acceptance by JPL, regardless of when or where JPL takes physical possession, unless the Contract specifically provides for earlier passage of title.
- (b) Unless the Contract specifically provides otherwise, risk of loss or damage to supplies shall remain with the Contractor until, and shall pass to JPL upon:
- (1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or
  - (2) Acceptance by JPL or delivery of the supplies to JPL at the destination specified in the Contract, whichever is later, if transportation is f.o.b. destination.
- (c) Paragraph (a) above shall not apply to supplies that so fail to conform to Contract requirements as to give a right of rejection. The risk of loss of or damage to such nonconforming supplies remains with the Contractor until cure or acceptance. After cure or acceptance, paragraph (a) above shall apply.

- (d) Under paragraph (a) above, the Contractor shall not be liable for loss of or damage to supplies caused by the negligence of officers, agents, or employees of JPL acting within the scope of their employment.

#### **ARTICLE GP-76. WARRANTY**

(a) **Definitions.**

- (1) "Acceptance," as used in this Article, means the act of an authorized representative of JPL by which JPL assumes for itself, or as an agent of another, ownership of existing and identified supplies, or approves specific services rendered, as partial or complete performance of the Contract.
- (2) "Correction," as used in this Article, means the elimination of a defect.
- (3) "Supplies," as used in this Article, means the end items furnished by the Contractor and related services required under this Contract. The word does not include "data."

(b) **Contractor's Obligations.**

- (1) The Contractor warrants that all supplies furnished under this Contract will be free from defects in material and workmanship and will conform with all requirements of this Contract; provided, however, that with respect to GFP, the Contractor's warranty shall extend only to its proper installation, unless the Contractor performs some modification or other work on the property, in which case the Contractor's warranty shall extend to the modification or other work.
- (2) Any supplies or parts thereof corrected or furnished in replacement shall be subject to the conditions of this Article to the same extent as supplies initially delivered. This warranty shall run from the date of delivery of the corrected or replaced supplies.
- (3) The Contractor shall not be obligated to correct or replace supplies if the facilities, tooling, drawings, or other equipment or supplies necessary to accomplish the correction or replacement have been made unavailable to the Contractor by action of JPL. In the event that correction or replacement has been directed, the Contractor shall promptly notify JPL, in writing, of the nonavailability.
- (4) The Contractor shall also prepare and furnish to JPL data and reports applicable to any correction required (including revision and updating of all affected data called for under this Contract) at no increase in the Contract price.
- (5) When supplies are returned to the Contractor, the Contractor shall bear the transportation costs from the place of delivery specified in the Contract (irrespective of the f.o.b. point or the point of acceptance) to the Contractor's plant and return.
- (6) All implied warranties of merchantability and "fitness for a particular purpose" are excluded from any obligation contained in this Contract.

(c) **Remedies Available to JPL.**

- (1) In the event of a breach of the Contractor's warranty in paragraph (b)(1) of this Article, JPL may, at no increase in Contract price:
  - (A) Require the Contractor, at the place of delivery specified in the Contract (irrespective of the f.o.b. point or the point of acceptance) or at the Contractor's plant, to repair or replace, at the Contractor's election, defective or nonconforming supplies; or
  - (B) Require the Contractor to furnish at the Contractor's plant the materials or parts and installation instructions required to successfully accomplish the correction.
- (2) If JPL does not require correction or replacement of defective or nonconforming supplies or the Contractor is not obligated to correct or replace under paragraph (b)(3) of this Article, JPL shall be entitled to an equitable reduction in the Contract price.

- (3) JPL shall notify the Contractor in writing of any breach of the warranty in paragraph (b) of this Article within 60 days after discovery of the defect. The Contractor shall submit to JPL a written recommendation within 30 days as to the corrective action required to remedy the breach. After receipt of the Contractor's recommendation for corrective action, JPL may, in writing, direct correction or replacement as in paragraph (c)(1) of this Article, and the Contractor shall, notwithstanding any disagreement regarding the existence of a breach of warranty, comply with this direction. If it is later determined that the Contractor did not breach the warranty in paragraph (b)(1) of this Article, the Contract price will be equitably adjusted.
  - (4) If supplies are corrected or replaced, the period for notification of a breach of the Contractor's warranty in paragraph (c)(3) of this Article shall be 60 days after discovery of the defect.
  - (5) In no event shall the Contractor be liable to the Institute for consequential damages resulting from: i) general or particular requirements and needs of the Institute which the Contractor at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise; or ii) injuries to persons or property proximately resulting from any breach of warranty.
  - (6) The rights and remedies (or limitations thereof) provided in this Article are in addition to and do not limit any rights afforded by any other Article of this Contract.
- (d) As contemplated by paragraph (b) of this Article, the Contractor warrants the supplies furnished under this Contract for a period of time, as specified in the Contract Schedule, from the date of delivery, or if no time period is so specified then for the period(s) for which the Contractor customarily warrants the supplies for its commercial customers. The Contractor shall provide JPL with a copy of any standard warranty which is normally offered on a commercial product deliverable under this Contract. This warranty shall be deemed to be incorporated by reference, and JPL shall be entitled to all rights under such warranty in addition to the provisions of this Article; however, such commercial warranty shall not be construed as limiting JPL's rights under this Article.